*** HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY**

+Writ Petition No. 26653 of 1995

%Dated 21.03.2007

Lanka Anjaneyulu .. Petitioner

And

$ Saptagiri Grameena Bank
rep. by its Chairman,
Chittoor,
Chittoor District.

2. The General Manager,
Saptagiri Grameena Bank
Chittoor, Chittoor District .. Respondents

! Counsel for Petitioner: Sri P.Prabhakar Rao

^Counsel for Respondents: Sri P.R.Prasad

<GIST:

>HEAD NOTE:

? Cases referred

1. AIR 1958 SC 36
2. (1999) 2 SCC 21
3. 1980 (2) SCC 593
4. (2004) 11 SCC 743
5. AIR 1967 SC 1269
6. (1980) 4 SCC 379
7. (1985) 3 SCC 545
8. (1993) 4 SCC 727
9. (1996) 3 SCC 364

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

W.P. No.26653 of 1995

Date: 21.03.2007

Between:

Lanka Anjaneyulu

… Petitioner

AND

The Saptagiri Grameena Bank
rep. by its Chairman,
Chittoor District
and another,

… Respondents

O R D E R:

The Proceedings dated 28.4.1992 of the Kanakadurga Grameena Bank, (for short "the Bank") represented by its Chairman, Gudivada, Krishna District, which received affirmation by the Board of Directors of the Bank, vide proceedings dated 19.10.1995 are the subject matter of challenge in the present writ petition. Through the former proceedings, the petitioner's services were terminated, which termination was affirmed by the latter proceedings.

The brief facts leading to the dispute are narrated herein-below:

The 1st respondent-bank was sponsored by Indian Bank, one of the nationalized banks. This bank has about 30 branches in Krishna District with its Head Office situated in Gudivada, Krishna District. The bank opened its branch at Vallanki village, Veerulapadu Mandal on 29.12.1986. The petitioner was engaged as a Sweeper on 30.12.1986 by the Branch Manager. From the stage of daily-wage to start with, the petitioner started receiving consolidated pay from January, 1990 onwards and by the time of termination of his services, the petitioner was receiving Rs.700/- per month towards his consolidated wages.

The Bank took a policy decision at its meeting held on 28.3.1991

to regularize temporary Part-time Sweeper-cum-Messengers for payment of 50% of salary and allowances as are applicable to a regular Full-time Messenger in the sponsored Bank with effect from the date of their continuous engagement. In pursuance of it, the Bank issued Circular No.PR & L-7/91, dated 22.4.1991 in this regard. As the petitioner was eligible for being considered for regularization, the Branch Manager evidently asked him to produce educational and other certificates for considering his absorption. At that juncture, the Branch Manager, who came to be aware of the opinion expressed by the local people that the educational certificate produced by the petitioner was not genuine, addressed a letter dated 20.1.1992 to the Administrative Officer, Head Office to examine the genuineness or otherwise of the certificate produced by the petitioner. On receipt of the letter, the Chairman deputed Sri T.S.L.Narasimha Rao, Inspector, Hanumakonda to enquire into the genuineness of the certificate and Marks Memorandum for IX Class purportedly belonging to the petitioner. After conducting enquiry, the Inspector addressed a letter dated 12.2.1992 to the Chairman of the Bank wherein he informed that his enquiries revealed that no school by name St. Thomas High School has ever existed at Hanumakonda, but there was only a school called St. Thomas Grammar High School. It is further stated that his enquiries with the management of the latter school revealed that the petitioner did not study in the said school during the period 1975-1980 and that school was running up to class IV only during this period. Considering the report of the Inspector, the Chairman issued proceedings D.O.Lr.No.13/92, dated 12.2.1992 calling upon the petitioner to explain as to why disciplinary action as deemed fit should not be taken against him. The petitioner gave a reply dated 17.2.1992 wherein he stated that he studied in St. Thomas High School,

Hanumakonda, and when he went and enquired in the vicinity where the school was situated, he was told that the school got burnt. Then, the Chairman issued proceedings dated 28.2.1992 placing the petitioner under suspension pending enquiry. Thereupon, the Chairman addressed a letter dated 13.4.1992 to the District Educational Officer, Warangal District enclosing photocopies of Study, Conduct and Date of Birth certificates produced by the petitioner and requesting him to confirm whether the petitioner studied in the said school from 26.7.1975 to 26.6.1980 and whether the petitioner studied X Class in the said school. It is significant to extract the last two paragraphs of this letter which is available on record produced by the respondents:

> *"Sri L.Anjaneyulu, who is working in our office as a Part-time Sub-staff, requested for confirmation as (S.I.C.) at full pay in the Bank. Based on your confirmation about the genuineness of the study Certificates produced by him, a decision will be taken by us in this regard.*
> *For your information, he has confessed before us orally i.e., he never studied in Warangal. But subsequently produced certificate dated 20.8.1991 seeking appointment on full pay and hence this letter."*

In reply to this letter, the District Educational Officer, Warangal, vide his letter dated 18.4.1992 stated that there is no High School with the name St. Thomas High School existing at Hanumakonda now nor was it in existence at any time before. He also stated that the signatures found on the photocopies of the certificates enclosed by the Chairman to his letter dated 13.4.1992 are fake and that they are not of the signatures of the incumbents occupying the posts of Deputy Educational Officer and Deputy Inspector of schools whose names are also mentioned in the said letter.

On being satisfied with the bogus nature of the certificates

produced by the petitioner, the Chairman of the Bank issued proceedings dated 28.4.1992 terminating his services with immediate effect. This order was challenged in W.P.No.15235 of 1992, which was disposed of on 26.6.1995 with a liberty to the petitioner to file an appeal before the appellate authority and this Court directed the appellate authority to give a reasonable opportunity to the petitioner and take a decision after considering all the material available on record. The petitioner, accordingly, filed an appeal and the appellate authority, after considering the appeal, rejected it and the decision of the appellate authority was communicated to the petitioner by the General Manager of the Bank through his letter dated 19.10.1995. Aggrieved by these orders, the petitioner has filed the present writ petition.

A counter affidavit has been filed by General Manager of the first respondent Bank. It is averred in the counter affidavit that as there were no regular sub-staff cadre posts created in Vallanki branch, the petitioner's services were utilized as Sweeper in the exigency of service, pending creation of regular post; that as per the procedure prescribed in the bank the qualification for appointment for the post of Sweeper-cum-Messenger is a pass in VIIIth standard (minimum) and fail in Xth standard (maximum); that the petitioner was not appointed at any point of time either as regular employee or on temporary basis as there was no cadre post created at that time and therefore, the engagement of the petitioner was only contractual in nature. It is further averred that in pursuance of the policy decision taken by the bank, the petitioner was requested to submit his educational qualification certificates to enable the bank to regularize his service in the category of sub-staff. The allegation that the petitioner's provident

fund was deducted from his salary from the time of joining into service was denied. It was however stated that from the time when the bank decided to regularize the services it started deducting the Provident Fund; that the bank could not regularize the petitioner's service due to lack of minimum educational qualifications. It is also stated in the counter affidavit that the petitioner submitted a certificate from the Head Master, St.Thomas High School, Hanamkonda, Warangal to the Branch Manager to effect that he studied from 6th class to 10th class during 26.7.1975 to 26.6.1980; later the Branch Manager in his proceedings dated 20.1.1992 informed the Head Office that the petitioner does not possess the minimum educational qualification and the certificate submitted by him was fake; that on the basis of the communication sent by the Branch Manager one Sri P.S.L.Narsimha Rao, Inspector of the Branches was directed to verify the certificate submitted by the petitioner for the purpose of taking further action to regularize the service depending upon the genuineness of the certificate; that the said Inspector after personal verification reported that the petitioner has submitted false certificate and also submitted false marks memorandum for IX th class. It is further averred that on the basis of the investigation done by the Inspector of Branches the petitioner was served with a show cause notice dated 12.2.1992 calling upon him to show cause why disciplinary action should not be initiated against him for the misconduct committed by him and in reply he submitted a letter dated 17.2.1992 to the effect that after service of the order he has enquired in the area where the School was located and that he was informed that St.Thomas High School was burnt. Along with said letter he also forwarded another school certificate dated 20.8.1991 signed by the Head Master, St.Thomas High School. The said certificate was also counter signed by the Deputy Inspector of

Schools and Deputy Educational Officer, Warangal. In the said certificate submitted by the petitioner it is stated that he has studied up to 10th class in the year 1980; that on the request of the Bank the District Educational Officer in his proceedings dated 18.4.1992 informed the Bank that there is no High school with the name of St.Thomas High School existing at Hanamkonda either now or at any time before and that the signature of the officers of Education Department are fake signatures and that they are not the signatures of the incumbent who occupied the post as on 21.8.1991. Thus from the said proceedings of the District Educational Officer, the bank was satisfied that the school with the name (St.Thomas High School) never existed in the Hanamkonda and that the petitioner submitted forged certificate. Apart from that Mr.P.Dhattareya, A.O., also enquired with the District Educational Officer, Waranagal and submitted his report o 28.4.1992 that the said certificate produced by the petitioner was bogus. In Para-12 of the counter affidavit it is mentioned that when the petitioner appeared before the first respondent, the proceedings of District Educational Officer brought to his notice that he has pleaded guilty for the lapse he has committed and he has also requested to condone the same; that even at the time of disposal of the appeal he was again given an opportunity to explain about the forged and fraudulent document produced by him and the petitioner told the Board that he has nothing to tell or give in writing; that the petitioner has not reacted to the quarries of the board members for the production of fraudulent certificates at the time of hearing. It was further stated in the counter that for those reasons the petitioner's service could not be regularized and the service of the petitioner was terminated which was confirmed by the board in appeal.

No reply affidavit was filed by the petitioner denying any of the

averments contained in the counter affidavit.

Heard Sri P.Prabhakar Rao, learned counsel appearing for the petitioner and Sri P.R.Prasad, learned counsel for the respondents.

At the hearing it came to light that the first respondent – kanakadurga Grameena Bank was merged with Saptagiri Grameena Bank with Chittoor as its headquarters. The petitioner was therefore permitted to correct the cause title by showing Saptagiri Grameena Bank in place of kanakadurga Grameena Bank. The cause title was accordingly corrected with the permission of the Court by the learned counsel for the petitioner. Thereupon at the instance of Sri P.R.Prasad the matter was further adjourned to enable him to get further instructions from the newly added Bank and the writ petitioner was finally heard thereafter. Sri P.Prabhakar, learned counsel for the petitioner made the following submissions:

(1) The order of the Chairman of the Bank terminating the petitioner's service is in flagrant violation of Staff Service Regulations 1987 (for short ' the Regulations') of the Bank and in violation of the Principles of natural justice.

(2) Since the order of termination casts stigma on the petitioner, the same cannot be termed as termination 'simplicitor' and therefore such a termination ought to be preceded by holding of an enquiry; and

(3) *The appellate authority failed to exercise the jurisdiction vested in it, inasmuch as it has failed to correct the fundamental error committed by the Chairman in terminating the services of the petitioner without holding an enquiry.*

Per contra, Sri P.R.Prasad, learned counsel for the respondent made the following submissions:

1) though the order on its face appears to be based on production of fraudulent study certificate, the order in fact

and reality is one pertaining to termination 'simplicitor' and therefore no formal enquiry is required to be held;

2) *since the respondents have probed into the correctness or otherwise of the certificates produced by the petitioner, in the context of taking a decision as to whether the petitioner's services have to be regularized or not and not so much to investigate into the petitioner's misconduct and therefore, no formal enquiry is required to be held; and*

3) *at any rate, the petitioner was engaged purely as a temporary measure in exigencies of work, and in the absence of any sanctioned post, he does not fall within the definition of 'employee' under Regulation 2(f) of the Regulations and therefore, there was no obligation on the part of the respondents to hold a full fledged enquiry as envisaged under the regulations.*

Having regard to the rival contentions, the following points arise for consideration:

1. *Whether the petitioner was an 'employee' within the definition of Regulation 2(f) of the Regulations?*
2. *Whether the order of termination dated 28.4.1992 was an order of termination simplicitor?*
3. *Whether the termination of petitioner's service without holding an enquiry is illegal and if so, the petitioner is entitled to any relief?*

Re-Point No.1:

In paras-4 and 5 of the affidavit filed in support of the writ petition, the petitioners submitted as under;

"It is submitted that a branch of the respondent bank was

opened at Vallanki village, Veerulapadu Mandal, Krishna District dated 29.12.1986. I was engaged as a Sweeper on 30.12.1986 by the branch Manager of the said branch and I was paid Rs.12/- per day. I worked for about 3 years as Sweeper. From January 1990 onwards, I was being paid Rs.630/- per month. In May, 1991 my salary was increased to Rs.670/- per month and in February, 1992 it was enhanced to Rs.700/- per month. Right from the date of my appointment, the required amount for P.F. was being adjusted from my salary. I have discharged my functions to the satisfaction of my superiors and there has been no adverse remarks against me at any point of time. I was also paid bonus of Rs.642.25 ps. In May 1992.

I respectfully submit that I was not given written appointment order. It was under the impression that I was a sweeper in the Bank, till I received the order of suspension dated 28.2.1992 wherein my post was shown as regular part- time messenger. While I was working in the Bank I used to attend the Bank at 9.00 a.m., in the morning and sweep the bank premises. The banking hours would commence at 10.00 a.m. I used to sweep inside the bank clear the tables and assist the Branch manager and Cashier just like a record assistant and I also used to go to the villages attached to this branch of the bank. Thus the total hours I work for day would be more than the usual working hours per day."

Nowhere in the affidavit, the petitioner contended that he was appointed temporarily against any sanctioned post. He admitted that no appointment order in writing was given to him. However, the General Manager of the Bank in para-3 of the counter affidavit specifically pleaded that there were no regular sub-staff cadre posts created in the branch at the time of opening the branch and that pending creation of regular posts the petitioner's services were utilized as Sweeper in the exigencies of services. It is further pleaded that the petitioner was not appointed at any point of time either as regular employee or on temporary basis as there was no cadre post created at that time and that the engagement of the petitioner was only contractual in nature. The petitioner has not filed any rejoinder

controverting these specific allegations.

The definition 'employee' under Regulation 2(f) of the Regulations reads; "employee means a person appointed to any of the posts specified in sub-regulation (3) of Regulation 3." Sub-regulation (3) of Regulation 3" reads as under:

> "Employee shall include Senior Clerk-cum-Casher, Junior Clerk-cum-Cashier, Junior Clerk-cum-Typist, Stenographer or Steno-Typist; Driver-cum-Messenger, sweeper and such other employee as may be specifically included by the Board with the prior approval of the Central Government."

From the aforementioned definition of the employee, it is clear that a person becomes an employee of the bank if he is appointed to any of the posts specified in sub-regulation (3) of Regulation 3. From the rival pleadings extracted above it is clear that when the petitioner was engaged as sweeper, there were no sanctioned posts in the Vallanki branch as it was newly created. No appointment order was issued appointing the petitioner as a Sweeper or as any other employee. The very nomenclature 'post' connotes that it is a sanctioned post whether temporary or permanent. In the absence of any controversy that no regular sub-staff cadre posts were created in the Vallanki branch at the time of engagement of the petitioner, it cannot be said that the petitioner was appointed to a post in order to fall within the definition under Regulation 2(f) of the Regulations. Regulation 1(3) of the Regulations read as under:

> *" They shall apply to every officer and other employee of the Bank. Provided that they shall not apply, except as otherwise provided in these regulations or to such extent as may be specifically or generally specified by the Board, to:*
>
> *a) a person employed temporarily on daily wages or to a person recruited on special contracts.*

b) a person on deputation from sponsor bank or from the central government or the state government.

From the afore extracted regulation it is clear beyond any pale of doubt that application of the regulations is excluded in case of persons employed temporarily on daily wages or to a person recruited on special contracts. From the petitioner's own admission he was being paid Rs.12/- per day in the beginning for about three years and he was being paid consolidated sum thereafter till his services were terminated I am therefore of the view that the petitioner falls in the category of persons employed temporarily on daily wage basis as provided for in regulation 1(3)(a) of the regulations. The application of the regulations is therefore excluded in the case of petitioner and consequently the procedure prescribed under the regulations for terminating the services of an employee of the bank has no application to him. Thus this point is answered against the petitioner.

Re-Point No.2:

Regulation 30 provides for imposition of various penalties and the procedure to be followed before imposition of such penalties. Removal from service is one such penalty prescribed under regulation 30(1) of the Regulations. It is apt to extract regulation 30(2) of the Regulations:

"No officer or employee shall be subjected to the penalties referred to in clause (b), (c), (d); (e), or (f) of sub/regulation(1) except by an order in writing signed by the Chairman and no such order shall be passed without the charge being formulated in writing and given to the said officer or employee so that he shall have reasonable opportunity to answer them in writing or in

person as he prefers and in the latter case his defence shall be taken down in writing and read to him;

Provided that the requirements of this sub-regulation may be waived, if the facts on the basis of which action is to be taken have been established in a court of law or court martial, or where the officer or employee has absconded or where it is for any other reason impracticable to communicate with him or where there is difficulty in observing them and the requirements can be waived without injustice to him. In every case where all or any or the requirements of this sub-regulation are waived, the reasons for so doing shall be recorded in writing."

Relying upon this regulation Sri P.Prabhakar Rao, learned counsel contended that failure on the part of the respondents to hold an enquiry before terminating the service of the petitioner renders the termination order per se illegal. Sri Prabhakar Rao also drew my attention to the letter dated 28.2.1992 addressed by the Chairman to the petitioner to show that enquiry was in fact initiated and he was suspended pending enquiry, but, the respondents abandoned further enquiry and passed the impugned order. He further submitted that the impugned order of termination clearly shows that the termination of the petitioner was based on the sole ground that the study certificate produced by him is a fraudulent one and that therefore, a stigma is attached to the petitioner which required holding of an enquiry before passing such an order.

Regulation 30(2) of the regulations merely incorporated the principle embodied in Article 311(2) of the Constitution of India which provided that no government servant shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of

being heard in respect of those charges.

In **Parshotam Lal Dhingra vs Union of India**[1] while dealing with the case of probationer the Supreme Court held that where a person is appointed in a permanent post to government service on probation, the termination of his service during or at the end of the period of probation will not ordinarily and by itself be a punishment, for, the government servant so appointed, has no right to continue to hold such a post any more than the servant employed on probation by a private employer is entitled to do. It was further held that such a termination does not operate as forfeiture of any right of the servant to hold the post, for he has no such right and obviously cannot be a dismissal, removal, or reduction of rank by way of punishment. The Apex Court in that case while dealing with different situations where a government servant is entitled to an enquiry and an opportunity of hearing before termination of his service held that cases may arise where the government may find a servant unsuitable for the post on account of misconduct, negligence, inefficiency or other disqualification. If such a servant was appointed to a post, permanent or temporary, either on probation or on an officiating basis then the very transitory character of the employment implies that the employment shall be terminable at any time on reasonable notice given by the Government. In such a case the government may proceed to take action against the servant in exercise of powers under the terms of contract expressed or implied or under the rules regulating the conditions of service, if any, be applicable and ordinarily in such a situation the government will take its course. But the government may take the view that a simple termination of service is not enough and that the conduct of the servant has been such that he deserves punishment entailing penal provisions. In such a case the government

may choose to proceed against the servant on the basis of misconduct, negligence, inefficiency or the like and inflict on him the punishment of dismissal, removal or reduction carrying with it the penal consequences. The Supreme Court held that in such cases the servant will be entitled to the protection of Article 311(2) of the Constitution. In para-28 of the judgment, the Supreme Court summarized the position as under:

> "It is further held that the use of the expression 'termination' or 'discharge' is not conclusive; that in spite of the use of such innocuous expression, the Court has to apply two tests, namely; a) whether the servant has a right to post, or b) whether he has been visited with civil consequences. If the case satisfies either of the two tests and then it must be held that the servant must be punished and the termination of service must be taken as dismissal or removal of service, reversion to his substantive rank and if the protection under Article 311 is not extended then the termination of service or reduction in the rank must be held to be wrongful and in violation of the constitutional right of the servant".

Analyzing various decisions on the point, the Supreme Court in ***Radhey Shyam Gupta vs. U.P.state Agro Industries Corporation Ltd.,***[2] held in paras-33 and 34 as under:

> *"It will be noticed from the above decision that the termination of the services of a temporary servant or one on probation, on the basis of adverse entries or on the basis of an assessment that his work is not satisfactory will not be punitive inasmuch as the above facts are merely the motive and not the foundation. The reason why they are the motive is that the assessment is not done with the object of finding out any misconduct on the part of the officer, as stated by Shah, J. (as he then was) in* ***State of Orissa vs. Ram Narayan Das (AIR 1961 SC 177)****. It is done only with a view to decide whether he is to be retained or continued in service. The position is not different even if a preliminary enquiry is held because the purpose of a preliminary enquiry is to find out if there is prima facie evidence or material to initiate a regular departmental*

enquiry. It has been so decided in ***Champaklal Chimanlal Shah vs. Union of India (AIR 1964 SC 1854)****. The purpose of the preliminary enquiry is not to find out misconduct on the part of the officer and if a termination follows without giving an opportunity, it will not be bad. Even in a case where a regular departmental enquiry is started, a charge-memo issued, reply obtained, and an enquiry officer is appointed* **-** *if at that point of time, the enquiry is dropped and a simple notice or termination is passed, the same will not be punitive because the enquiry officer has not recorded evidence nor given any findings on the charges. That is what is held in* ***State of Punjab vs. Sukh Raj Bahadur (AIR 1968 SC 1089)*** *and in* ***A.G.Benjamin vs. Union of India (1967 (1) LLJ 718 (SC)****. In the latter case, the departmental enquiry was stopped because the employer was not sure of establishing the guilt of the employee. In all these cases, the allegations against the employee merely raised a cloud on his conduct and as pointed by Krishna Iyer, J, in* ***Gujarat Steel Tubes Ltd., vs. Mazdoor Sabha (1980 (2) SCC 593)*** *the employer was entitled to say that he would not continue an employee against whom allegations were made the truth of which the employer was not interested to ascertain. In fact, the employer by opting to pass a simple order of termination as permitted by the terms of appointment or as permitted by the rules was conferring a benefit on the employee by passing a simple order of termination so that the employee would not suffer from any stigma which would attach to the rest of his career if a dismissal or other punitive order was passed. The above are all examples where the allegations whose truth has not been found, and were merely the motive.*

But in cases where the termination is preceded by an enquiry and evidence is received and findings as to misconduct of a definitive nature are arrived at behind the back of the officer and where on the basis of such a report, the termination order is issued, such an order will be violative of the principles of natural justice inasmuch as the purpose of the enquiry is to find out the truth of the allegations with a view to punish him and not merely to gather evidence for a future regular departmental enquiry. In such cases, the termination is to be treated as based or founded upon misconduct and will be punitive. These are obviously not cases where the employer feels that there is a mere cloud against the employee's

conduct but are cases where the employer has virtually accepted the definitive and clear findings of the enquiry officer, which are all arrived at behind the back of the employee – even though such acceptance of findings is not recorded in the order of termination. That is why the misconduct is the foundation and not merely the motive in such cases."

In **Gujarat Steel Tubes Ltd., vs. Mazdoor Sabha**[3] the Supreme Court observed that termination effected because the master is satisfied of the misconduct and of the consequent desirability of terminating the service of the delinquent servant, is a dismissal. If there is suspicion of misconduct the master may say that he does not wish to bother about it and may not go into his guilt but may feel like not keeping a man he is not happy with. He may not like to investigate nor take the risk of continuing a dubious servant. Then it is not dismissal but termination simplicitor, if no injurious record of reasons or punitive pecuniary cutback on his full terminal benefits is found.

In **State of Punjab and Others vs. Balbir Singh**[4] a constable of Punjab Police Service was discharged from service following preliminary enquiry in which it was found that he consumed liquor and misbehaved with a lady constable. The constable was discharged on finding that he is unlikely to be proved to be an efficient police officer. The Supreme Court after consideration of all the relevant case law on the point held at para-7 as under:

"Thus the principle that in order to determine whether the misconduct is motive or foundation of order of termination, the test to be applied is to ask the question as to what was the "object of the enquiry". If an enquiry or an assessment is done with the object of finding out any misconduct on the part of the employee and for that reason his services are terminated, then it would be punitive in nature. On the other hand, if such an enquiry or an assessment is aimed at determining the suitability of an employee for a particular job,

such termination would be termination simplicitor and not punitive in nature. This principle was laid down by Shah, J. (as he then was) as early as 1961 in the case of ***State of Orissa vs. Ram Narayan Das (AIR 1961 SC 177).*** *It was held that one should look into "object or purpose of the enquiry" and not merely hold the termination to be punitive merely because of an antecedent enquiry. Whether it (order of termination) amounts to an order of dismissal depends upon the nature of the enquiry, if any, the proceedings taken therein and the substance of the final order passed on such enquiry. On the facts of that case, the termination of a probationer was upheld inasmuch as the purpose of the enquiry was held to be to find out if the employee could be confirmed. The purpose of the enquiry was not to find out if he was guilty of any misconduct, negligence, inefficiency or other disqualification."*

Applying the aforementioned principles to the present facts of the case, it is no doubt true that the respondents initially sought to apply the regulations applicable to its employees by informing the petitioner while suspending him that a departmental enquiry will be held. However, after a preliminary enquiry in which it was found that the school which purported to issue the relevant study and other certificates to the petitioner itself was not in existence it has not initiated any departmental enquiry, but, however it has passed the order of termination by purporting to invoke Regulation 10.2 and 30.1. The termination order no doubt uses the expression 'fraudulent' while referring to the study certificate, and it prima facie, shows that the said expression is stigmatic. Further reference to Regulation 10.2 and 30.1. also prima facie indicates that the respondents have invoked the regulations to terminate the petitioner's service. In order to know the real nature of termination, I have looked into the record. Note on the basis of which the impugned order was passed by the first respondent reads as under:

"consequent on the enquiry of the Inspector, we have called for the explanation of Sri Lanka Anjaneyulu, RPTM of the Branch. The explanation given by the employee is not satisfactory. The employee is guilty of producing a false certificate with respect to his educational qualification to gain employment in this Bank. Hence, as per staff regulation No.30.1 this act comes under major misconduct. Hence, we may remove him from the service of our Bank.

We have already conducted interviews for the post of RPTM at Vallanki branch for the candidates sponsored by Employment Exchange, Vijayawada and selected Sri P.Sri Rama Krishna Rao as per order of merit. Now we may post the second person as per order of merit Sri M.Prakash to our Vellanki branch, if we remove Mr.L.Anjaneyulu from the service of our Bank."

The appellate authority while considering the appeal recorded the following finding on the note file:

"After hearing the appellant and verifying the necessary documents, letters etc., Board of Directors observed that charge framed against appellant is proved beyond doubt with sufficient documentary evidences. They are also unable to agree with the contentions of appellant made in his appeal.

Board of Directors opined that it is a matter of integrity. In institutions like Banks, integrity plays a major role. Honesty, integrity and maintenance of secrecy is a must for all employees. Production of fraudulent certificates in support of educational qualification calls for deterrent punishment and he cannot be continued in the services of the Bank. In view of the fact that the appellant has neither reacted or refuted the charges/allegations either orally or in writing. The Board of Directors unanimously resolved the following against the appeal filed by Sri L.Anjaneyulu, the appellant after considering the material available on record.

"Board of Directors see no ground/reasons to alter/amend the punishment of 'termination from service of Bank'. Therefore, the appeal fails and the punishment awarded by Chairman and Disciplinary authority stands confirmed."

From these observations undoubtedly one cannot but say that misconduct is the foundation for the termination.

Further, as already seen, the order of removal casts a stigma on the petitioner as it was concluded that he produced a "fraudulent" certificate. I am, therefore of the view that the impugned order of termination is not an order of termination simplicitor.

Re-Point Nos.3 :-

As discussed under point No.1, the petitioner does not fall within the definition of "employee" under the Regulations of the Bank. Therefore, the Regulations would not apply to him. As the petitioner does not hold any post under services of either State or Union, he is not directly covered by Article 311 of the Constitution of India and consequently, he cannot claim protection available under the said Article directly. Unless the petitioner falls within the ambit of the Regulations of the Bank, he cannot claim any protection under them too. Since the petitioner who was indubitably engaged on daily-wage basis, he is specifically excluded from the operation of the Regulations of the Bank. It is no doubt true that the 1st respondent while terminating the petitioner's services relied upon Regulations 10.2 and 30.1. In my considered opinion, this does not by itself bring the petitioner within the sweep of the Regulations. It is quite evident that the respondents, oblivious of the petitioner's status, erroneously invoked the Regulations to terminate the petitioner's services. The petitioner, however cannot take advantage of this error, while the admitted facts prove that he was engaged on daily-wage basis' and was not appointed against any post and there were no sanctioned posts of Sub-staff for the branch in question.

But still the question is whether the petitioner who is not covered

by service regulations and Article 311 of the Constitution of India can be discharged/removed from service on the ground of misconduct without holding an enquiry? A discharge simplicitor does not cast a stigma on the employee. Once a stigma is attached, it is difficult for him to secure a fresh employment in the market since the stigma continues to hang around his neck. Thus a stigmatic order results in adverse civil consequences. As held by the Supreme Court in **State of Orissa vs. Binapani Devi**[5] any order even if it is administrative in nature visiting a person with adverse civil consequences shall be preceded by a reasonable opportunity to the person likely to be affected by such adverse order. Ordinarily therefore an enquiry ought to be conducted before termination of services even of a daily wage employee if misconduct is the foundation for such termination. But in the instant case certain facts which were already discussed hereinabove need to be considered. They are,

i) The respondents in fact embarked upon ascertaining the genuineness of the certificate produced by the petitioner in the context of regularizing his services, as minimum educational qualification is required to be possessed by every candidate for regularization. The letter dated 13.4.1992 addressed by the Chairman of the Bank to the District Educational Officer which was extracted in the earlier portion of this order clearly indicates the intention of the bank in seeking verification of the certificate produced by the petitioner. The letter extracted further shows that the petitioner had in fact confessed before the bank orally that he never studied in Warangal and that later he produced certificated

dated 20.8.1991seeking appointment on full pay.

ii) The petitioner was in fact put to notice about the fake nature of the certificate produced by him and after receiving the reply from him to the effect that his verification revealed that the school was burnt, the bank started making enquiries in this regard.

iii) A thorough verification of the genuineness of the certificate was undertaken by the Bank, initially through Sri T.S.L.Narsimha Rao, the Inspector of the Bank and later through the District Educational Officer, who through his letter dated 18.4.1992 unequivocally informed that there was no High School with the name St.Thomas High School at Hanamkonda at any point of time. He also stated that the signatures found on the photo copies of the certificates enclosed by the Chairman to his letter dated 13.4.1992 are fake and that they are not the signatures of the incumbents occupying the posts of District Educational Officer and Deputy Inspector of Schools, whose names are also mentioned in the school certificate.

v) During the personal hearing granted by the Directors of the Board, the appellate authority, the Directors asked the petitioner to say if he wants to represent anything and the petitioner said nothing except requesting to help him. It is apt to extract the minutes of the file of the Board of Directors herein below:

> " All the above directors verified the appeal papers and other relevant documents. They also granted a personal hearing to Mr.L.Aanjaneyulu, appellant, with prior intimation at 1.00 P.M., on 25.8.1999. Directors asked him to say if he wants to represent anything. Mr.L.Anjaneyulu said nothing except requested to help him. He has not reacted for the questions of Board of Directors for the production of fraudulent

study certificate etc. Board gave him time to think and to give reply, if necessary in writing, about any submission etc. Board of Directors reassembled and appellant appeared again by 3.30 P.M., on that day. He said that he has nothing to tell or to give anything in writing."

At this juncture the present trend of judicial opinion on the issue of observance of principles of natural justice is worth noticing. There is a slight shift from the conventional view as reflected in **S.L.Kapoor vs Jagmohan**[6], **Olga Tellis vs Bombay Municipal Corporation**[7] etc., in later judgments. In the first referred case the Supreme Court held that non-observance of principles of natural justice is in itself a prejudice caused. In the latter case it was held that action without notice was not justified on the mere ground that the affected party would have no explanation even if hearing is afforded by serving notice. However, in **Managing Director, ECIL, Hyderabad vs B.Karunakar and Others**[8] the Supreme Court while considering the judgment in **Union of India vs Mohd.Ramzan Khan ((1991) 1 SCC 588)** held mere non-supply of enquiry report does not vitiate the order imposing penalty unless prejudice is shown by such non-supply. The Supreme Court held therein that the theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights and that they are not incantations to be invoked nor rights to be performed on all and sundry occasions. It was further held that whether in fact prejudice has been caused to the employee or not on account of the denial to him of the report has to be considered on the facts and circumstances of each case. I n **State Bank of Patiala vs**

S.K.Sharma[9] it was held that where there is substantial compliance of principles of natural justice, violation of procedural aspects does not vitiate the proceedings. In cases where employees are not governed by Article 311 or service regulations, the employer in order to satisfy the principles of natural justice may still have to afford an opportunity to the employee. In respect of such category the Supreme Court drew a distinction between a case of no notice/no enquiry and a case of defective enquiry. It was held that in the latter category of cases the employee is required to prove prejudice in order to succeed in getting the action invalidated. It was inter alia held that while applying the rule of *audi alteram partem* the Court/Tribunal/Authority must always bear in mind the ultimate and over riding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice and it is this objective which should guide them in applying the rule to varying situations that arise before them.

The ratio that can be culled out from these later judgments is that the ultimate objective of rule of *audi alteram partem* is to ensure a fair hearing, the requirement of observance of this rule varies from situation to situation and from case to case and the aggrieved party must show prejudice suffered by him due to denial of the audi alteram partem rule. If we apply the true test, namely; whether failure to hold formal enquiry occasioned failure of justice in this case, the answer should in the negative. This case does not fall in the “no notice” category as described in **State Bank of Patiala case (9 supra)**. At best it can be said that the Bank failed to hold a regular departmental enquiry.

The facts of the case as noted in the order clearly indicate that though the elaborate procedure of appointing an enquiry

officer and holding a formal enquiry as is required to be followed in the case of the regular employees of the bank covered by its regulations has not been followed, I am fully convinced that the bank has acted with fairness and diligence before coming to the conclusion that the petitioner has produced false certificates. Apart from the show cause notice dated 12.2.1992 issued by the Chairman to the petitioner before terminating his services, the petitioner was given personal hearing by the appellate authority. The very fact that the petitioner did not react to the questions put to him by the Board of Directors and failed to give any explanation whatsoever on the bogus nature of the certificates produced by him during the course of hearing of appeal indicates that he had no valid defence and that holding of a formal departmental enquiry would not have placed the petitioner in a better position and the same would have been a mere empty ritual and an exercise in futility.

From the aforementioned factual matrix of the case I am satisfied that by not holding enquiry no prejudice is caused to the petitioner. At the appellate stage though a full opportunity was afforded to the petitioner albeit in the nature of a post decisional hearing, the petitioner failed to capitalize on it. This undoubtedly shows that the petitioner was in fact unable to impeach the correctness of the findings recorded by the disciplinary authority that the certificates produced by him are fake. Therefore I hold that for respondents' failure to hold a formal enquiry before terminating his services, the petitioner is not entitled to any relief much less the relief of reinstatement.

For the aforementioned reasons, the writ petition fails and is accordingly dismissed.

C.V. NAGARJUNA REDDY,J

21.03.2007

Bcj/Mdaa

---

[1] AIR 1958 SC 36

[2] (1999) 2 SCC 21

[3] 1980 (2) SCC 593

[4] (2004) 11 SCC 743

[5] AIR 1967 SC 1269

[6] (1980) 4 SCC 379

[7] (1985) 3 SCC 545

[8] (1993) 4 SCC 727

[9] (1996) 3 SCC 364